

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5817 of 1997

With

SPECIAL CIVIL APPLICATION NO 5818 OF 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MURIMA SALMABEN ALARAKHA

Versus

STATE OF GUJARAT

Appearance:

MR AM MEHTA for Petitioner

MR JR NANAVATI for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 21/10/97

ORAL JUDGEMENT

Rule. Mr. Nanavaty, learned advocate appearing for the respondents waives service of Rule. In view of the short controversy involved, as agreed by the learned counsel for the parties, both the matters are taken up for final hearing today and are being disposed off by

this common judgment.

2. The petitioners were appointed as Peons Class-IV on vacant post in Audit Department of the Jamnagar Municipal Corporation by order dated 31st January, 1997. They were appointed on probation for a period of six months. Their services have been terminated by an order dated 31st July, 1997.

3. It is contended that the petitioners were appointed against clear vacancies by way of regular selection and, therefore, their services could not have been terminated summarily. On the other hand, Mr. Nanavaty, learned Counsel submits that the petitioners were appointed on probation for a period of six months. Their cases were considered by the Standing Committee. It was found that there were two surplus peons in the office of the Commissioner of the Corporation and, therefore, the petitioners were allotted to the Audit Department. In view of this, it was not necessary to continue the services of the petitioners. It is also stated that after the lapse of six months, the petitioners have no right to continue.

4. The petitioners were appointed against the clear vacancies by regular selection. Reading of the order of appointment also shows that the petitioners were not appointed for a specified term. They were, of course, appointed on probation for a period of six months. Their services, or course, could be terminated on the basis of their performance but not on the basis that their services are no more required. As the respondent has sought to content that their services were not required, in such contingency, appropriate procedure for declaring them surplus could be adopted, but in any case, their services could not have been terminated considering that it was the term appointment. Thus, in my view, the order of termination of the service of the petitioners are ex-facie illegal and void.

5. In view of the aforesaid, both these petitions are allowed and the order of termination dated 31st July, 1997 Annexure "B" are hereby quashed and set aside. The petitioners shall be taken in service with all consequential benefits. Rule is made absolute accordingly.

Vyas